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3626

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/844,091		HOPKINS, JOHN W.	
	Examiner		Art Unit	
	Lena Najarian		3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 9 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 9 and 10 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Independent claims 1, 2, and 3 recite establishing a facilitator company and the facilitator company performing various steps. It is unclear what Applicant seeks patent protection for: establishing a facilitator company or the steps performed by the facilitator company? Clarification is required.

5. Claim 7 recites the limitation "said cooperative funding" in line 2. There is insufficient antecedent basis for this limitation in the claim.

6. Dependent claims 4-6 and 8 incorporate the deficiencies of claims 1-3, through dependency, and are also rejected.

Claim Rejections - 35 USC § 103

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7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cairnes (6,139, 494) in view of Lencki et al. (US 2002/0049617 A1) in view of DeBruin-Ashton (6,014,629) in view of Iliff (5,660,176) in view of Oscar et al. (US 2001/0037216 A1), and in view of Surwit et al. (6,024,699).

(A) Referring to claim 1, Cairnes discloses a method of doing business comprising the steps of:

establishing a facilitator company having business purposes of generating health care awareness, providing health care education and providing a health care access system, said facilitator company having management personnel and personnel who are patient advocates for prospective patients, said facilitator company also having communications facilities that provide communication with patients, doctors, health systems, and pharmacy companies, said facilities including a telephone system and a computer system, whereby the facilitator company can establish a wellness pathway (healthcare) which is available to the public in a nationwide health care system (col. 1, lines 18-21 and 53-64, col. 2, lines 10-13, col. 3, lines 6-22, col. 2, line 65 – col. 3, line 9 of Cairnes),

said facilitator company performing the steps of:

(b) contracting with plural medical doctors who specialize in treating a specific medical condition whereby said doctors become subscribers to the facilitator's wellness pathway and agree to (col. 3, lines 15-26 of Cairnes),

(i) accept at least one appointment with a specified prospective patient, said appointment being made and coordinated by a patient advocate from the facilitator company (col. 11, lines 14-21 of Cairnes),

provide education on the causes of known medical conditions and approved therapies (col. 12, lines 13-39 of Cairnes),

(f) determining a wellness condition of the patient after step (e) from the patient and recording the same in the records of the facilitator company (col. 8, lines 29-34 of Cairnes),

whereby the patient is guided through the wellness pathway and receives the benefit of expedited treatment by a doctor who specializes in the patient's specific condition (col. 9, line 61 – col. 10, line 7 of Cairnes), and whereby the doctors, suppliers and any other investor can be more effective by increased efficiency of operations and increased numbers of patients and whereby the facilitator company can be financially self-sustaining in the operation and management of the wellness pathway (col. 2, lines 10-16, col. 5, lines 51-65, and col. 3, lines 60-67 of Cairnes).

Cairnes also discloses the use of medical devices (col. 5, lines 38-44 of Cairnes).

Cairnes does not disclose manages care insurance companies, access to the internet and having a website on the internet, advertising its services via at least one media including print, broadcast and internet media, paying a fee to the facilitator company,

contracting with plural suppliers of medical drugs and medical devices whereby said suppliers become subscribers to the facilitator's wellness pathway and agree to

(i) make their products available to doctors who are subscribers to said wellness pathway,

(ii) report the name of each doctor who has used its products and other specified information, and

(iii) pay a fee to the facilitator company for using the wellness pathway, having a patient advocate answer telephone calls from prospective patients, and furnish information and services at no charge, as follows: provide a choice of doctors that specialize in a specific condition, said doctors being located in the vicinity of the prospective patient, make an appointment with the chosen doctor, remind the prospective patient to attend the appointment and follow up to determine whether the appointment was completed, determining from the chosen doctor's office whether a future appointment has been made by the prospective patient, said doctor has available different choices of medicines, drugs, prosthetics and other therapies from different manufacturers for treatment of the patient.

However, each of the above features are well-known in the art, as evidenced by Lencki, DeBruin-Ashton, Iliff, Oscar, and Surwit.

Lencki discloses manages care insurance companies, access to the internet, and having a website on the internet (para. 109 and para. 207 of Lencki). Lencki also discloses providing a choice of doctors that specialize in a specific condition, said doctors being located in the vicinity of the prospective patient, making an appointment with the chosen doctor, reminding the prospective patient to attend the appointment and follow up to determine whether the appointment was completed (para. 152, para. 153, and para. 241 of Lencki).

DeBruin-Ashton discloses advertising its services via at least one media including print, broadcast and internet media, and paying a fee to the facilitator company (Fig. 3A and col. 5, lines 39-44 of DeBruin-Ashton).

Oscar discloses contracting with plural suppliers of medical drugs whereby said suppliers become subscribers to the facilitator's wellness pathway and agree to

- (i) make their products available to doctors who are subscribers to said wellness pathway,
- (ii) report the name of each doctor who has used its products and other specified information, and
- (iii) pay a fee to the facilitator company for using the wellness pathway (para. 8 and para. 43 of Oscar).

Iliff discloses having a patient advocate answer telephone calls from prospective patients, and furnish information and services at no charge (col. 1, lines 39-51 of Iliff).

Surwit discloses determining from the chosen doctor's office whether a future appointment has been made by the prospective patient (col. 20, line 52 – col. 21, line 6 of Surwit).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Lencki, DeBruin-Ashton, Oscar, Iliff, and Surwit within Cairnes. The motivation for doing so would have been for the system to be available world wide 24 hours a day/ 7 days a week (para. 206 of Lencki), to allow a patient to choose a provider according to certain criteria (para. 153 of Lencki), to ensure that a patient does not miss an appointment by giving healthy reminders (para. 241 of Lencki), to reach particular customers and to reward the company for helping reach those customers (col. 4, lines 64-66 of DeBruin-Ashton), for the company to operate under agreements with manufacturers (para. 8 of Oscar), to provide health information around-the-clock (col. 1, lines 39-51 of Iliff), and to track patient compliance (col. 20, lines 64-66 of Surwit).

As per the recitation of said doctor has available different choices of medicines, drugs, prosthetics and other therapies from different manufacturers for treatment of the patient, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a

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process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

(B) Referring to claim 2, Cairnes discloses a method of doing business comprising the steps of:

establishing a facilitator company for promoting health awareness, education and access to a health care system, said facilitator company having management personnel and patient advocate personnel for prospective patients, said facilitator company also having communications facilities for communication with patients and doctors, said facilities including a telephone system and a computer system, said facilitator company utilizing said personnel and said communication facilities to establish and operate a healthcare pathway available to the public (col. 1, lines 18-21 and 53-64, col. 2, lines 10-13, col. 3, lines 6-22, col. 2, line 65 – col. 3, line 9 of Cairnes),

said facilitator company performing the steps of:

(b) contracting with plural medical doctors who specialize in treating a specific medical condition whereby said doctors become contributors to the healthcare pathway of the facilitator company, and agree to accept at least one appointment with a specified prospective patient, said appointment being made and coordinated by a patient advocate from the facilitator company, (col. 3, lines 15-26 and col. 11, lines 14-21 of Cairnes),

provide education on the specific medical condition (col. 12, lines 13-39 of Cairnes), and

(f) determining the wellness condition of the patient after step (e) from the patient and recording it in the records of the facilitator company, whereby the patient is guided through the healthcare pathway and receives treatment by a doctor specializing in the patient's specific condition (col. 9, line 61 – col. 10, line 7 of Cairnes).

Cairnes also discloses the use of medical devices (col. 5, lines 38-44 of Cairnes).

Cairnes does not disclose access to the internet and a website on the internet,
(a) advertising the services of the facilitator company via at least one media selected from print, broadcast and internet media,

paying a fee to the facilitator company for using the healthcare pathway,

(c) contracting with plural suppliers of medical drugs whereby said suppliers become contributors to the healthcare pathway and agree to make their products available to doctors who are contributors to said pathway, report the name of each doctor who has used its products, and to pay a fee to the facilitator company for using the healthcare pathway,

(d) having a patient advocate answer telephone calls from prospective patients and furnish services at no charge, as follows: provide a choice of doctors that specialize in the specific medical condition and make an appointment with a chosen doctor, and

(e) determining from the chosen doctor's office whether a future appointment has been made by the prospective patient.

However, each of the above features is well established in the prior art, as evidenced by Lencki, DeBruin-Ashton, Oscar, Iliff, and Surwit.

Lencki discloses access to the internet and a website on the internet (para. 109 of Lencki) and providing a choice of doctors that specialize in the specific medical condition and make an appointment with a chosen doctor (para. 153 of Lencki).

DeBruin-Ashton discloses (a) advertising the services of the facilitator company via at least one media selected from print, broadcast and internet media, and

paying a fee to the facilitator company for using the healthcare pathway (Fig. 3A and col. 5, lines 39-44 of DeBruin-Ashton).

Oscar discloses (c) contracting with plural suppliers of medical drugs whereby said suppliers become contributors to the healthcare pathway and agree to make their products available to doctors who are contributors to said pathway, report the name of each doctor who has used its products, and to pay a fee to the facilitator company for using the healthcare pathway (para. 8 and para. 43 of Oscar).

Iliff discloses (d) having a patient advocate answer telephone calls from prospective patients and furnish services at no charge (col. 1, lines 39-51 of Iliff).

Surwit discloses (e) determining from the chosen doctor's office whether a future appointment has been made by the prospective patient (col. 20, line 52 – col. 21, line 6 of Surwit).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Lencki, DeBruin-Ashton, Oscar, Iliff, and Surwit within Cairnes. The motivation for doing so would have been for the system to be available world wide 24 hours a day/ 7 days a week (para. 206 of Lencki), to allow a patient to choose a provider according to certain criteria (para. 153 of Lencki), to reach particular customers and to reward the company for helping reach those customers (col. 4, lines 64-66 of DeBruin-Ashton), for the company to operate under agreements with manufacturers (para. 8 of Oscar), to provide health information around-the-clock (col. 1, lines 39-51 of Iliff), and to track patient compliance (col. 20, lines 64-66 of Surwit).

As per the recitation said doctor having available different choices of medicines and other therapies from different suppliers for treatment of the patient whereby the doctors and suppliers can be more efficient with increased numbers of patients and whereby the facilitator company can be financially self-sustaining, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

9. Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cairnes (6,139, 494) in view of Lencki et al. (US 2002/0049617 A1) in view of Surwit et al. (6,024,699), in view of Costin, IV et al (US 2002/0049816 A1) in view of DeBruin-Ashton (6,014,629), and in view of Iliff (5,660,176).

(A) Referring to claim 3, Cairnes discloses a method of doing business comprising

(a) establishing a facilitator company for promoting health awareness, education, and access to a health care system, said facilitator company having management personnel and patient advocate personnel for prospective patients, said facilitator company also having communications facilities for communication with patients and doctors, said facilities including a telephone system and a computer system, said facilitator company utilizing said personnel and said communication facilities to establish and operate a healthcare pathway available to the public (col. 1, lines 18-21 and 53-64, col. 2, lines 10-13, col. 3, lines 6-22, col. 2, line 65 – col. 3, line 9 of Cairnes),

(b) selecting a specific medical condition to be treated in the healthcare pathway and identification of a general class of patients to be targeted (col. 12, lines 22-40 and col. 9, lines 61-64 of Cairnes),

(c) establishing an advisory council for the selected condition, said council comprising one or more persons who are qualified regarding the treatment of patients for the selected medical condition and regarding the medical drugs and devices available for such treatment and regarding the ethics of medical practice (col. 2, lines 56-64 of Cairnes),

(h) having the patient advocate make doctor appointments, provide reminders to the prospective patient of appointments (col. 11, lines 14-21 of Cairnes),

(i) supplying information obtained in steps (f), (g) and (h) to an appointment generating system and database (col. 6, lines 21-36 and col. 11, lines 14-21 of Cairnes), and

(k) preparing reports to contributors regarding the usage tracking of step (j) and regarding the appointments generating system and database of step (i) (col. 9, lines 9-13 of Cairnes).

Cairnes does not disclose access to the internet and a website on the internet, suppliers of medical drugs and devices,

(d) presenting the facilitator's plan for the healthcare pathway to prospective contributors, including doctors and suppliers of medical drugs and devices and to prospective participants in affinity grant funding,

(e) creating prospective patient awareness through advertising to reach prospective patients having the specific medical condition,

(f) utilizing the communication system of the facilitator company to educate prospective patients who call the facilitator company for information about their specific medical condition,

(g) having a patient advocate answer telephone calls from prospective patients and provide educational information about the specific medical condition,

follow-up with the doctor's office regarding completion of the appointment and

(j) performing usage tracking of medical drugs and devices and tracking of doctor's services based on information obtained from doctors and suppliers.

However, each of the above features are well-known in the art, as evidenced by Lencki, Surwit, Costin, IV, DeBruin-Ashton, and Iliff.

Lencki discloses access to the internet and a website on the internet (para. 109 of Lencki).

Surwit discloses suppliers of medical drugs and devices (col. 10, lines 1-17 of Surwit), following-up with the doctor's office regarding completion of the appointment (col. 20, line 52 – col. 21, line 6 of Surwit), and (j) performing usage tracking of medical drugs and devices and tracking of doctor's services based on information obtained from doctors and suppliers (col. 10, lines 1-17 of Surwit).

Costin, IV discloses presenting the facilitator's plan to prospective contributors and to prospective participants in affinity grant funding (see abstract of Costin, IV).

DeBruin-Ashton discloses (e) creating prospective patient awareness through advertising to reach prospective patients having the specific medical condition (Fig. 3A of DeBruin-Ashton).

Iliff discloses (f) utilizing the communication system of the facilitator company to educate prospective patients who call the facilitator company for information about their specific medical condition and (g) having a patient advocate answer telephone calls from prospective patients and provide educational information about the specific medical condition (col. 1, lines 39-51 of Iliff).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Lencki, Surwit, Costin, DeBruin-Ashton, and Iliff within Cairnes. The motivation for doing so would have been for the system to be available world wide 24 hours a day/ 7 days a week (para. 206 of Lencki), to track patient compliance (col. 20, lines 64-66 of Surwit), to track patient supply usage automatically (col. 10, lines 1-17 of Surwit), to raise money (para. 7 of Costin), to reach particular customers (col. 4, lines 64-66 of DeBruin-Ashton), and to provide health information around-the-clock (col. 1, lines 39-51 of Iliff).

(B) Referring to claim 4, Cairnes does not disclose wherein said prospective contributors include health insurance companies, health systems, pharmacies and government agencies.

Lencki discloses wherein said prospective contributors include health insurance companies, health systems, pharmacies and government agencies (para. 207, para. 153, and para. 268 of Lencki).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Lencki within Cairnes. The motivation for doing so would have been to have a wide variety of contributors.

(C) Referring to claim 5, Cairnes, Lencki, and Surwit do not disclose forming a cooperative relationship with at least one association whereby the facilitator company agrees to pay an affinity grant funding to said association in an amount based upon the

number of inquiries addressed to the facilitator company by prospective patients who learned of the facilitator company through said association.

Costin discloses forming a cooperative relationship with at least one association whereby the facilitator company agrees to pay an affinity grant funding to said association in an amount based upon the number of inquiries addressed to the facilitator company by prospective users who learned of the facilitator company through said association (para. 6 and para. 34 of Costin).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Costin within Cairnes, Lencki, and Surwit. The motivation for doing so would have been to provide incentives for associations to participate (para. 68 of Costin).

(D) Referring to claim 6, Cairnes, Lencki, and Surwit do not disclose wherein said association is a not-for-profit association.

Costin discloses wherein said association is a not-for-profit association (para. 6 of Costin).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Costin within Cairnes, Lencki, and Surwit. The motivation for doing so would have been to allow the partnering of the facilitator with causes (para. 6 of Costin).

(E) Referring to claims 7 and 8, Cairnes, Lencki, and Surwit do not disclose paying said affinity grant funding to the said association out of the proceeds of said cooperative funding and wherein said computer system includes affinity grant computer software

and said method includes the step of tracking inquiries by prospective users by using said affinity grant computer software for relating the amount of the grant to the number of inquiries.

Costin discloses paying said affinity grant funding to the said association out of the proceeds of said cooperative funding (para. 63 and para. 33 of Costin) and wherein said computer system includes affinity grant computer software and said method includes the step of tracking inquiries by prospective users by using said affinity grant computer software for relating the amount of the grant to the number of inquiries (para. 34 and para. 72 of Costin).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Costin within Cairnes, Lencki, and Surwit. The motivation for doing so would have been to manage and enhance the campaign and so that incentives or other forms of credit may be attributed to individuals associated with the fundraising (para. 72 of Costin).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches an interactive patient educational tool (US 2003/0022141 A1); a method and system for providing pre and post operative support and care (US 2001/0021910 A1); an automated and interactive telecommunications system (US 6,249,809 B1); a multi-user distribution system and center for diagnosis-related educational information and home medical tests and

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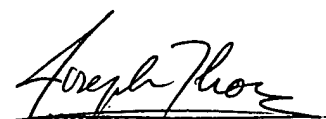
devices (US 2001/0037215 A1); an enhanced medical treatment system (US 2003/0055679 A1); a system and method for supporting delivery of health care (6,012,035); a medical information management system and patient interface appliance (US 2002/0022973 A1); an all care health management system (5,301,105); an electronic provider-patient interface system (US 6,757,898 B1); and a therapeutic behavior modification program, compliance monitoring and feedback system (6,039,688).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER
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